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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK CROSBIE, MICHAEL BRESLIN, and JAMES
HINCKLEY

Appeal 2009-001545
Application 10/804,529
Technology Center 3600

Decided: September 1, 2009

Before: JENNIFER D. BAHR, MICHAEL W. O'NEILL, and STEFAN
STAICOVICI, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Patrick Crosbie, et al (Appellants) appeal under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 15-20, 22, 23, and 25. Claims 1-14, 21, 24, and 26-44 have been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to a portable platform that is placed near a passenger vehicle for assisting in loading and unloading the passengers. In particular, a platform 20 spans over rail 12 to act as a bridge from a train on adjacent track 14 to a permanent platform 16. Spec. 5:14-20; fig. 1. The height of the platform 20 is adjustable by positioning system 35, which also adjusts the platform 20 horizontally. Spec. 8:16 to 9:4; fig. 2. Platform 20 also includes a safety rail 30 (Spec. 9:22-23) and is movable along a rail via platform 20's attachment to trolley 24 having castors (wheels) 26. Spec 7:5-17.

Claim 15, reproduced below, is illustrative of the claimed invention.

15. A portable over-way platform structure for a railway system, comprising:

a portable platform configured to bridge a first track to permit pedestrian traffic to cross over the first track to and from a permanent platform, the portable platform having an uppermost surface maintained at a same level relative to the permanent platform, the portable platform being self-supporting and independent from the permanent platform for maintaining the same level;

a safety fence coupled to the uppermost surface of the portable platform and arranged

transversely to a direction of the length of the first track for pedestrian safety;

a trolley coupled to the portable platform, which supports a wheel system;

a positioning system coupled between the trolley and the portable platform to provide vertical and horizontal adjustment of the portable platform relative to the wheel system to maintain the same level; and

wheels included in the wheel system to engage the first track to permit the portable platform structure to be moved along the first track to permit placement of the platform structure.

The Rejections

The Examiner relies on the following references:

Coath	US 701,469	Jun. 3, 1902
Farmer	US 1,980,329	Nov. 13, 1934
Fowler	US 2,190,708	Feb. 20, 1940
Hogue	US 4,224,880	Sep. 30, 1980
Coslovi	US 5,743,191	Apr. 28, 1998
Nijenhuis	US 6,401,624 B1	Jun. 11, 2002

Appellants seek review of the Examiner's rejection under 35 U.S.C. § 103(a) of claims 15-18 as unpatentable over Nijenhuis, Coslovi, and Coath; claims 19, 22, and 23 as unpatentable over Nijenhuis, Coslovi, Coath, and Fowler; claim 20 as unpatentable over Nijenhuis, Coslovi, Coath, and Hogue; and claim 25 as unpatentable over Nijenhuis, Coslovi, Coath, and Farmer.

SUMMARY OF DECISION

We AFFIRM.

ISSUE

The issue is whether the Examiner has shown, for claim 15, that Nijenhuis, Coslovi, and Coath, in combination, render obvious a portable platform that is "self-supporting and independent from the permanent platform for maintaining the same level," and that "provide[s] vertical and horizontal adjustment of the portable platform ... to maintain the same level." Appellants do not separately argue any other claim. *See* Appeal Br. 13-14.

FACTS PERTINENT TO THE ISSUES

(FINDINGS-OF-FACT (FF))

- FF1 The Examiner found that Nijenhuis describes a portable platform that is capable of self-support and is independent from a permanent platform. Ans. 4. Suspension system 17 of railway wagon 6 lifts the portable platform 14 to a certain height before the wagon 6 comes to a stop at a permanent platform. Ans. 7. Support elements 11, mounted on the permanent platform, provide added support for the portable platform 14 when unloading heavy containers, if the portable platform 14 is lowered onto the support elements 11. Ans. 4, 7.
- FF2 The Examiner found that Nijenhuis describes a platform 14 with a trolley under the platform having a vertically adjustable suspension system 17. Ans. 3. The suspension system 17 includes pneumatic means to adjust the height. Ans. 3-4.
- FF3 The Examiner found that Nijenhuis does not describe a safety fence. Ans. 4.

- FF4 The Examiner found that Nijenhuis does not describe a platform positioning system with horizontal adjustment of the platform. Ans. 5.
- FF5 The Examiner found that Coath describes a steering mechanism in the form of a pivot. Ans. 4; *see also* Coath, fig. 1, noting that the wheels *a* and suspension elements *e*, *h*, *d*, and *c* are joined to platform *g* at pivot *f*, allowing platform *g* and wheels *a* to rotate relative to each other horizontally. The steering mechanism's rotation allows the vehicle to run around curves safely and with low resistance and wear. Col. 1, ll. 10-16.
- FF6 The Examiner found that Coslovi describes a safety fence 110 or 112. Ans. 4.
- FF7 Nijenhuis describes supports 11, which can be extended out of the permanent platform *if* the wagons need to be supported. Col. 7, ll. 42-44. The supports 11 provide *additional support* to the support already provided by pneumatic springs 17. *See* col. 6, ll. 35-49, noting that the supports 11 prevent platform 14 from "springing in and out" during loading. Therefore, supports 11 are not necessary to support platform 14.

ANALYSIS

In rejecting claim 15, the Examiner found that Nijenhuis describes a portable platform that is self-supporting and independent from a permanent platform (FF1), with a positioning system that provides vertical adjustment of the platform (FF2). Ans. 3-4. Next, the Examiner found that Nijenhuis does not describe a safety fence (FF3), nor a positioning system that

provides horizontal adjustment (FF4). Ans. 4-5. However, the Examiner found that Coath describes a steering mechanism that provides horizontal adjustment of the platform (FF5), and that Coslovi describes a safety fence (FF6). Ans. 4-5. The Examiner reasoned that it would have been obvious to modify the platform in Nijenhuis with the horizontal adjustment described in Coath to allow the platform to negotiate curves. Ans. 5. Further, the Examiner reasoned that it would have been obvious to modify the platform in Nijenhuis with the safety fence of Coslovi to provide operator safety. Ans. 4.

Appellants first argue that Nijenhuis fails to describe the "self-supporting and independent" feature of claim 15 because Nijenhuis describes the use of supports 11 that support the platform while loading. Appeal Br. 9-10; *see also* FF1; *cf.* FF7. However, claim 15 does not require that the platform be self-supporting and independent *while loading*. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). The term "self-supporting" requires only that the platform be capable of supporting its own weight.

Further, Nijenhuis describes that supports 11 are not required to support the platform *at all* times, such as when the platform is moving into place. *See* FF1. Nijenhuis notes that supports 11 can be used "[i]f the [platforms] then have to be supported," which clearly indicates that there are times when the platforms do not have to be supported. *See* FF7. As the Examiner suggests, some loads may be light enough to be supported without the use of supports 11. *See* Ans. 8. Therefore, Appellants have not shown

that the Examiner erred in determining that Nijenhuis describes a "self-supporting and independent" platform.

Appellants next argue that the "pivot" mechanism in Coath does not provide "horizontal adjustment of the portable platform relative to the wheel system," as recited in claim 15. Appeal Br. 12. However, Coath describes a pivot that provides an adjustment of the platform relative to the wheels in a horizontal plane, which maintains the platform surface at the same level. *See* FF5. Claim 15 does not require a "horizontal adjustment" of any particular type or kind. A horizontal rotation is clearly a horizontal adjustment. Therefore, Appellants have not shown that the Examiner erred in determining that the combination of the platform of Nijenhuis and the pivot mechanism in Coath describe a horizontal adjustment.

Finally, Appellants argue that the Examiner has failed to show motivation to modify the suspension system in Nijenhuis with the pivoting suspension system in Coath. Appeal Br. 13. However, the Supreme Court has stated that a rigid insistence on teaching, suggestion, or motivation is incompatible with its precedent concerning obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Although rejections on obviousness grounds must be supported by "some articulated reasoning with some rational underpinning" to combine the known elements in the manner required in the claim at issue, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. The Examiner stated that the reason for combining the suspension system in Nijenhuis with the pivoting suspension system in Coath is to allow the combined suspension to

negotiate track curves. Ans. 4-5. Because tracks curve, it is clear that a suspension that easily negotiates track curves is a benefit. *See* FF5. The fact that the Examiner's reason for combination is different from Appellants' is of no consequence. *See, e.g., In re Kahn*, 441 F.3d 977, 987 (Fed. Cir. 2006) (motivation question arises in the context of the general problem confronting the inventor rather than the specific problem solved by the invention); *KSR*, 550 U.S. at 420 ("[u]nder the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.").

CONCLUSION

Appellants have not shown that the Examiner erred in determining that Nijenhuis, Coslovi, and Coath, in combination, render obvious a portable platform that is "self-supporting and independent from the permanent platform for maintaining the same level," and that "provide[s] vertical and horizontal adjustment of the portable platform ... to maintain the same level," as recited in independent claim 15. Likewise, Appellants, in relying on that same line of argument in contesting the rejections of the other claims involved in this appeal, have not shown error in the Examiner's rejections of claims 16-20, 22, 23, and 25.

DECISION

The Examiner's decision is affirmed as to claims 15-20, 22, 23, and 25.

Appeal 2009-001545
Application 10/804,529

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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